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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CHECKERS INDUSTRIAL PRODUCTS, LLC,
a Colorado Limited Liability Company,

Plaintiff,

v.

CALDWELL BENNETT, INC. (d/b/a C.B.I.
PROFESSIONAL WIRING SYSTEMS), a New
York Corporation,

Defendant.

CASE NO.

COMPLAINT

Jury Demanded

Plaintiff, Checkers Industrial Products, LLC (“Checkers”), by and through its counsel of record, Holland & Hart LLP, asserts the following complaint against Defendant, Caldwell Bennett, Inc. d/b/a C.B.I. Professional Wiring Systems (collectively, “Caldwell”), and hereby allege as follows:

PARTIES

1. Plaintiff Checkers is a Colorado Limited Liability Company, with a principal place of business at 620 Compton Street, Broomfield, CO 80020.

2. Defendant Caldwell is a New York corporation, with a principal place of business at 6152 County Seat Road, Oriskany, NY 13424.

3. Upon information and belief, Caldwell does business as C.B.I. Professional Wiring Systems. For all purposes herein, Caldwell includes all activities and actions of C.B.I. Professional Wiring Systems and both entities are collectively referred to as Caldwell.

4. Caldwell makes, uses, sells, and/or offers for sale in the United States, and/or imports into the United States, cable protectors and cable guards.

NATURE OF ACTION

5. This is a civil action for infringement of United States Design Patent Nos. D415,112 (the “112 Patent”) and D418,818 (the “818 Patent”) arising under 35 U.S.C. § 1, *et seq.*

6. This is also an action for trade dress infringement arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under the Patent Laws of the United States 35 U.S.C. § 1 *et seq.*, and § 39 of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and 28 U.S.C. §§ 1331 and 1338. This Court also has jurisdiction over Checkers’ related state and common law claims pursuant to 35 U.S.C. §§ 1338 and 1367.

8. This Court has personal jurisdiction over Caldwell because of Caldwell’s contacts with this forum, including Caldwell’s doing business in Nevada and having committed acts of infringement within this forum by promoting, distributing, offering to sell and selling products covered by Checkers’ design patents and trade dress at trade shows. Caldwell has purposely availed itself of the benefits of conducting business in the District of Nevada and is therefore subject to the jurisdiction in this Court.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b), (c), (d) because Caldwell does business, has committed acts of infringement and is subject to personal jurisdiction in this Court.

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GENERAL ALLEGATIONS**A. Checkers' Design Patents**

10. Since 1987, Checkers has manufactured and sold superior quality safety products, including cable protectors, to the consuming public. Like those of its competitors, Checkers' cable protectors are designed to safeguard electrical cables (and other types of cables, cords, hoses, tubing, etc.) from vehicle and pedestrian traffic. Checkers' cable protectors are also designed for safe and easy passage of vehicles and pedestrians over the cables and cable protectors.

11. On August 1, 2011, Checkers acquired Peterson Systems International ("Peterson") and Yellow Jacket, Inc. ("Yellow Jacket"), together with all of their intellectual property assets, including the design patents and proprietary trade dress asserted here.

12. Since 2011, Checkers has marketed a combined product offering from Checkers, Peterson, and Yellow Jacket including the Yellow Jacket, Wasp, Bumble Bee, DO-Max, DO-Lite, Fox, Crossover, Linebacker, Guard Dog, Cross-Guard, Ramp-Runner, Cross-Link, FastLane, Powerback, Super-Cross and Diamondback lines of cable protector products. All of these products have the principal purpose of protecting cord or tube-like conduit against damage from vehicular or pedestrian traffic.

13. To distinguish it from competitors, Checkers' cable protectors are uniquely configured, distinctly colored, use exclusively shaped interlocking connectors (T-shaped, L-shaped and "dog bone" shaped) and are embossed with its distinctive diamond shaped tread pattern, among other features.

14. For many years, Checkers has continuously engaged in the development, manufacture, and sale of a wide array of cable guards and cable protectors, among other industrial safety products.

15. Since its founding in 1987, Checkers has taken steps to protect its innovative cable management systems and designs. For example, Checkers is the owner of various United States design patents relating to its cable protectors. In particular, Checkers is the owner of all right, title and interest to each of the United States design patents identified in Table 1 (hereinafter, the

“Checkers Design Patents”). A copy of each asserted Checkers Design Patent is attached to this Complaint as indicated in Table 1.

TABLE 1: CHECKERS DESIGN PATENTS			
U.S. DESIGN PATENT NO.:	TITLE:	ISSUE DATE:	EXHIBIT NO.:
D415,112	Set of Connectors For a Modular Cable Protector	October 12, 1999	1
D418,818	Modular Cable Protector	January 11, 2000	2

B. Checkers' Trade Dress

16. Checkers has enjoyed considerable success in marketing its cable protectors that have been sold for use in a variety of circumstances including, without limitation, construction sites, sports arenas, concert halls, convention centers, power companies, resort hotels, etc. All branches of the United States military, NASA, and the EPA, as well as all of the major national television networks have also used Checkers' cable protectors.

17. Through considerable investment, advertising, marketing and impressive sales, the public has come to know and associate Checkers branded cable protectors as the sole source for these high quality, distinctive cable protectors.

18. Checkers constantly seeks to associate in the minds of its distributors and the consuming public its image as a provider of quality cable protectors. Its trade dress, including, without limitation the color scheme, diamond tread pattern, interlocking connectors and wider central channel width, among other things are designed to achieve (and have achieved) widespread recognition for quality and identifies to consumers that the origin of these products lies with Checkers. In particular, Checkers' trade dress includes its uniquely styled 5-bar tread surface (“5-Bar Trade Dress”) and T-shaped connector (T Connector Trade Dress”) as depicted in Exhibit 3.

19. Through its various product lines and steadfast protection of its trade dress, Checkers has achieved a reputation in the trade and consuming public throughout the United States and the world for providing high quality cable protectors.

20. As a result of Checkers' extensive use and promotion of its trade dress, including the 5-Bar Trade Dress and T Connector Trade Dress, Checkers has built up and now owns valuable goodwill that is symbolized by the trade dress. Purchasing distributors and the consuming public

1 have come to associate its trade dress with Checkers. In addition, the Checkers' trade dress is
2 distinctive and non-functional and has achieved significant secondary meaning.

3 **C. Caldwell's Infringing Activities**

4 21. Without Checkers' authorization, Caldwell has made, used, offered to sell,
5 promoted, distributed, sold, and/or imported into the United States cable protectors, including
6 those having designs that are substantially the same as the designs covered by the Checkers Design
7 Patents and/or Checkers' trade dress (hereafter, the "Infringing Cable Protectors"). Furthermore,
8 the parties' goods are sold through overlapping channels of trade.

9 22. In June of 2012, Caldwell exhibited their products, including the Infringing Cable
10 Protectors, at InfoComm 2012, an industry trade show held in Las Vegas from June 13 to June 15,
11 2012.

12 23. Checkers' representatives visited Caldwell's booth at the InfoComm 2012 trade
13 show and observed Caldwell's promotion of and offer to sell the Infringing Cable Protectors.

14 24. At InfoComm 2012, Checkers' representatives took photographs of the Infringing
15 Cable Protectors that show the unauthorized use of Checkers' patented design features and protected
16 trade dress, as shown below (*see also*, Exhibit 4):



25. Pursuant to 35 U.S.C. § 287, Checkers' representatives notified Caldwell that they believed Caldwell was infringing Checkers' patents and trade dress rights by promoting and offering to sell the Infringing Cable Protectors, including the Cable Cross model displayed at the InfoComm 2012 trade show—shown above and Exhibit 4.

26. The Infringing Cable Protectors have an identical T-shaped interlocking connector as the one protected by the '112 Patent and Checker's T Connector Trade Dress. Caldwell's use of this protected connector design is an infringement of the '112 Patent and Checkers' T Connector trade dress rights.

27. An expanded view of the infringing Caldwell T connector is shown below (*see also* Exhibit 4):



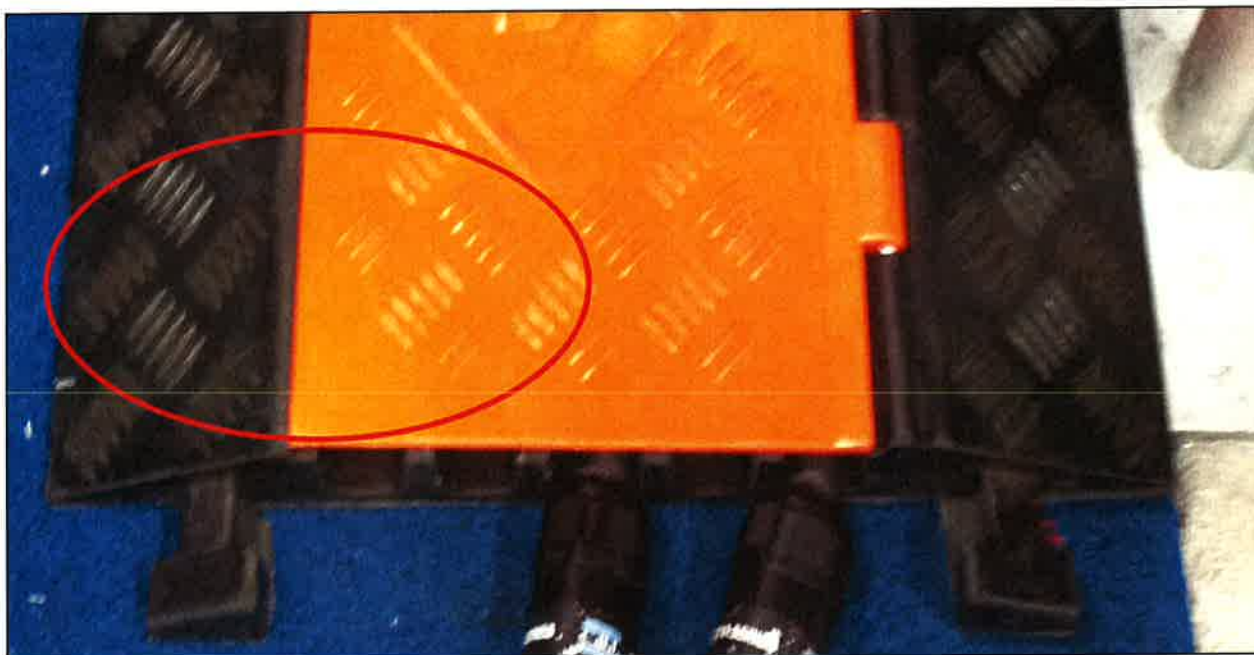
28. The Infringing Cable Protectors also have an identical 5-bar diamond tread pattern as the one protected by the '818 Patent and 5-Bar Trade Dress. Caldwell's use of this protected ornamental tread design is an infringement of the '818 Patent and Checkers' 5-Bar Trade Dress.

29. An example of the infringing Caldwell 5-bar tread pattern is shown below (*see also* Exhibit 4):

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///

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30. The trade dress of Caldwell's product—the combination of the T connector and 5-bar tread pattern and the total overall impression of the product, its size, shape, configuration, color scheme, and design—is likely to mislead consumers to mistakenly believe that the Infringing Cable Protectors originate from Checkers or that there is an affiliation or sponsorship by Checkers of the Infringing Cable Protectors.

31. The likelihood of confusion, mistake, and deception engendered by Caldwell's misappropriation of Checkers' trade dress and patented designs is causing irreparable harm to the goodwill symbolized by the overall design including the patented and distinctive 5-Bar tread pattern and T connectors, which symbolize and embody Checkers' reputation for quality.

FIRST CAUSE OF ACTION

(PATENT INFRINGEMENT—35 U.S.C. § 271)

32. Checkers re-alleges each and every allegation set forth in paragraphs 1-31 above, inclusive, and incorporates them by reference herein.

33. Caldwell has made, used, offered to sell, sold and/or imported into the United States, and is still making, using, offering to sell, selling and/or importing into the United States cable protectors and cable guards that infringe the Checkers Design Patents without Checkers' authorization. Caldwell's actions constitute patent infringement under 35 U.S.C. § 271(a).

34. Upon information and belief, Caldwell has been and is still inducing others to infringe the Checkers Design Patents. Caldwell's actions constitute induced infringement under 35 U.S.C. § 271(b).

35. Checkers has no adequate remedy at law, has suffered and continues to suffer irreparable harm as a result of Caldwell's acts, and is therefore entitled to a preliminary and permanent injunction to enjoin Caldwell's infringements of the Checkers Design Patents.

36. Checkers is entitled to recover all damages caused by Caldwell's infringement under 35 U.S.C. § 284.

37. If Caldwell continues to make, use, sell, offer for sale, or import the Infringing Cable Protectors following notice of Checkers' patent rights, Caldwell's infringement of the Checkers Design Patents will be willful and represent a reckless disregard of Checkers' patent rights. Accordingly, Checkers' is entitled to treble damages and attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

SECOND CAUSE OF ACTION

(TRADE DRESS INFRINGEMENT—LANHAM ACT § 43(a))

38. Checkers re-alleges each and every allegation set forth in paragraphs 1-37 above, inclusive, and incorporates them by reference herein.

39. Checkers is entitled to legal protection of its trade dress under § 43(a) of the Lanham Act, which trade dress includes the total or overall impression of Checkers' cable protectors, their unique configuration, packaging size, shape, color scheme, design, promotional literature, product specifications, interlocking connectors, wider central channel width, diamond tread plate, among other things, as Checkers' cable protectors are presented to the consuming public.

40. Caldwell has so closely imitated and/or copied the trade dress of Checkers' cable protectors, particularly its unique 5-Bar Trade Dress its T Connector Trade Dress, such that the consuming public has likely been confused, and will continue to be confused as to the source or origin of the Infringing Cable Protectors, and will erroneously believe that Caldwell's products come from Checkers or are sponsored by, affiliated with, or licensed by Checkers.

1 41. On information and belief, Caldwell's copying of Checkers' cable protector trade
2 dress was intentional, and in bad faith. Caldwell intended to create and/or market a cable protector
3 confusingly similar in appearance to Checkers' cable protectors. Caldwell has succeeded in
4 producing, distributing and/or offering cable protectors, which are confusingly similar in
5 appearance to Checkers' cable protectors.

6 42. Caldwell's cable protectors and Checkers' cable protectors are strikingly similar,
7 substantially duplicated, virtually identical, substantially identical, remarkably similar, essentially
8 duplicated and/or closely imitated.

9 43. Caldwell's acts of trade dress infringement have caused and continue to cause
10 damages and injury to Checkers.

11 44. Checkers may recover for its damages an award to compensate Checkers for the
12 injuries and damages it has sustained as a result of Caldwell's conduct which violates § 43(a) of
13 the Lanham Act.

14 45. Because Caldwell's acts were intentional, willful, and/or deliberate, Checkers is
15 entitled to an award of treble damages under § 43(a) of the Lanham Act.

16 46. Checkers is entitled to an award of pre-judgment interest for damages sustained as a
17 result of the Caldwell's wrongful conduct.

18 47. Caldwell's wrongful, malicious, fraudulent, deliberate, willful, intentional and/or
19 incredible conduct makes this case an exceptional case, entitling Checkers to an award of
20 attorneys' fees and costs under the Lanham Act.

21 48. Checkers has no adequate remedy at law, has suffered and continues to suffer
22 irreparable harm as a result of Caldwell's acts, and is therefore entitled to a preliminary and
23 permanent injunction to enjoin Caldwell's wrongful conduct.

24 **THIRD CAUSE OF ACTION**

25 **(UNFAIR COMPETITION—COMMON LAW)**

26 49. Checkers re-alleges each and every allegation set forth in paragraphs 1-48 above,
27 inclusive, and incorporates them by reference herein.

28 50. Checkers was the first to use its trade dress, including, but not limited to its 5-Bar

1 Trade Dress and its T Connector Trade Dress. As a result of Checkers' continuous promotion and
 2 sales of cable protection products bearing its distinctive trade dress for many decades, the
 3 Checkers' trade dress has become widely known and Checkers' has been identified in the public
 4 mind as the manufacturer of the products to which its trade dress is associated with.

5 51. Caldwell, with knowledge of and with intentional disregard of Checkers' rights,
 6 continues to advertise, promote, and sell products using the Checkers' trade dress, or colorable and
 7 confusing imitations thereof. Caldwell's acts are likely to cause, have caused, and will continue to
 8 cause confusion as to the source and/or sponsorship of Checkers' products.

9 52. In taking the above actions, Caldwell has participated in unfair competition. The
 10 actions as alleged above, constitute a misappropriation and infringement of Checkers' trade dress
 11 rights in its cable protectors and accompanying goodwill and reputation under the Lanham Act,
 12 federal common law and the common law of the State of Nevada, and constitute acts of unfair
 13 competition.

14 53. As alleged above, Checkers' has distinctive and protectable rights. Caldwell's
 15 actions cause a likelihood of confusion among consumers in the marketplace and therefore
 16 constitute unfair competition.

17 54. Caldwell's acts of infringement have caused and continue to cause damages and
 18 injury to Checkers for which Checkers must be compensated. Such infringing activities of
 19 Caldwell are willful and intentional, thereby justifying an award of exemplary damages.

20 **JURY DEMAND**

21 55. Checkers hereby demands that all claims or causes of action raised in this
 22 Complaint be tried by a jury to the fullest extent possible under the United States and Nevada
 23 Constitutions.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Checkers prays that this Court:

26 1. Preliminarily and permanently enjoin and restrain Caldwell, their officers, directors,
 27 principals, agents, servants, employees, successors and assigns, and all those in active concert or
 28

1 participation with them from all acts of patent infringement, trade dress infringement, dilution,
2 unfair competition or any other wrongful conduct alleged in this Complaint;

3 2. Preliminarily and permanently enjoin and restrain Caldwell, their officers, directors,
4 principals, agents, servants, employees, successors and assigns, and all those in active concert or
5 participation with them from (a) using Checkers' patented design features covered by the '112
6 Patent and the '818 Patent, and (b) using Checkers' trade dress in any advertising, promotional,
7 sales, offers for sale or importation activity concerning its cable protection products;


8 3. Direct that Caldwell be required to pay Checkers damages it has sustained, to
9 account for or relinquish to Checkers' all gains, profits, and advantages derived by Caldwell
10 through its unlawful conduct complained of in this Complaint;

11 4. Direct that Caldwell be required to pay Checkers treble damages under § 43(a) of
12 the Lanham Act for Caldwell's deliberate and willful misconduct;

13 5. Direct that Caldwell pay Checkers an award of punitive damages for the Caldwell's
14 deliberate and willful misconduct; and

15 6. Award Checkers such further relief as the Court may deem just and proper.

16 DATED July 26, 2012.

17 
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Attorneys for Plaintiffs

TABLE OF EXHIBITS

Exhibit 1	U.S. Design Patent No. 415,112
Exhibit 2	U.S. Design Patent No. 418,818
Exhibit 3	Color images of Checkers' 5-Bar Trade Dress and T Connector Trade Dress
Exhibit 4	Color photographs of Caldwell's Cable Cross cable guard offered for sale at InfoComm 2012

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EXHIBIT “1”

EXHIBIT “1”



US00D415112S

United States Patent [19]

Henry

[11] Patent Number: Des. 415,112

[45] Date of Patent: ** Oct. 12, 1999

[54] SET OF CONNECTORS FOR A MODULAR CABLE PROTECTOR

[76] Inventor: Stephen K. Henry, 3815 Northbrook Dr., C-21, Boulder, Colo. 80302

[**] Term: 14 Years

[21] Appl. No.: 29/070,954

[22] Filed: Apr. 10, 1997

Related U.S. Application Data

[63] Continuation of application No. 29/053,828, Apr. 30, 1996, abandoned.

[51] LOC (6) Cl. 13-03

[52] U.S. Cl. D13/155

[58] Field of Search D13/154, 155, D13/156; D6/582; D25/158; 428/53; 174/136, 68.1; 104/275; 52/284, 590.1, 591.1, 592.1, 589.1, 590.2, 590; 430/364

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ITW Irathane Systems.

Yellow Jacket protectors.

Kelsey cable crossovers.

Primary Examiner—Joel Sincavage

Attorney, Agent, or Firm—Dorr, Carson, Sloan & Birney, P.C.

[57] CLAIM

The ornamental design for the set of connectors for a modular cable protector, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of the set of connectors for a modular cable protector.

FIG. 2 is a top view of the set of connectors for a modular cable protector.

FIG. 3 is a left side view of the set of connectors for a modular cable protector.

FIG. 4 is a right side view of the set of connectors for a modular cable protector.

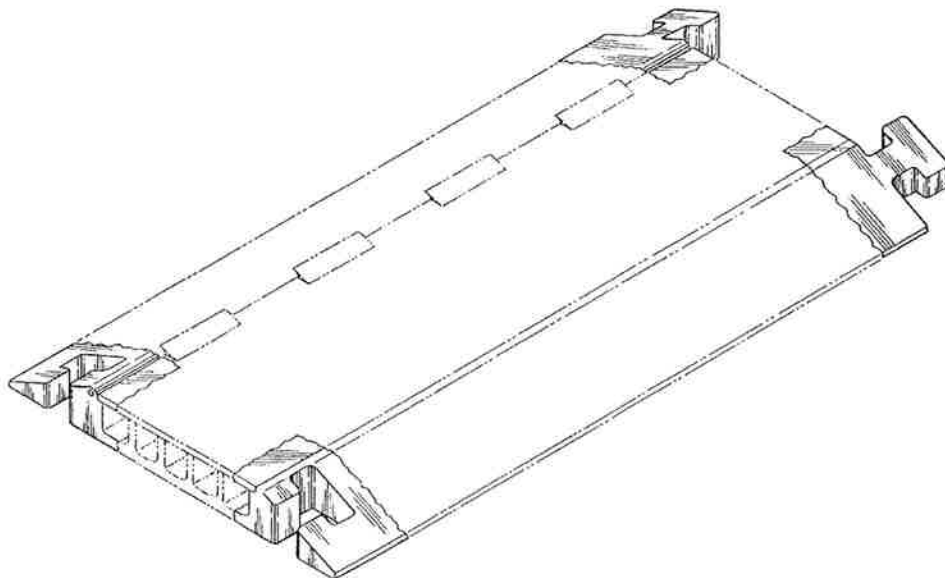
FIG. 5 is a bottom view of the set of connectors for a modular cable protector.

FIG. 6 is a front view of the set of connectors for a modular cable protector; and,

FIG. 7 is a rear view of the set of connectors for a modular cable protector.

The broken line showing throughout the figures is included for the purpose of illustrating the cable protector only and forms no part of the claimed design.

1 Claim, 3 Drawing Sheets



U.S. Patent

Oct. 12, 1999

Sheet 1 of 3

Des. 415,112

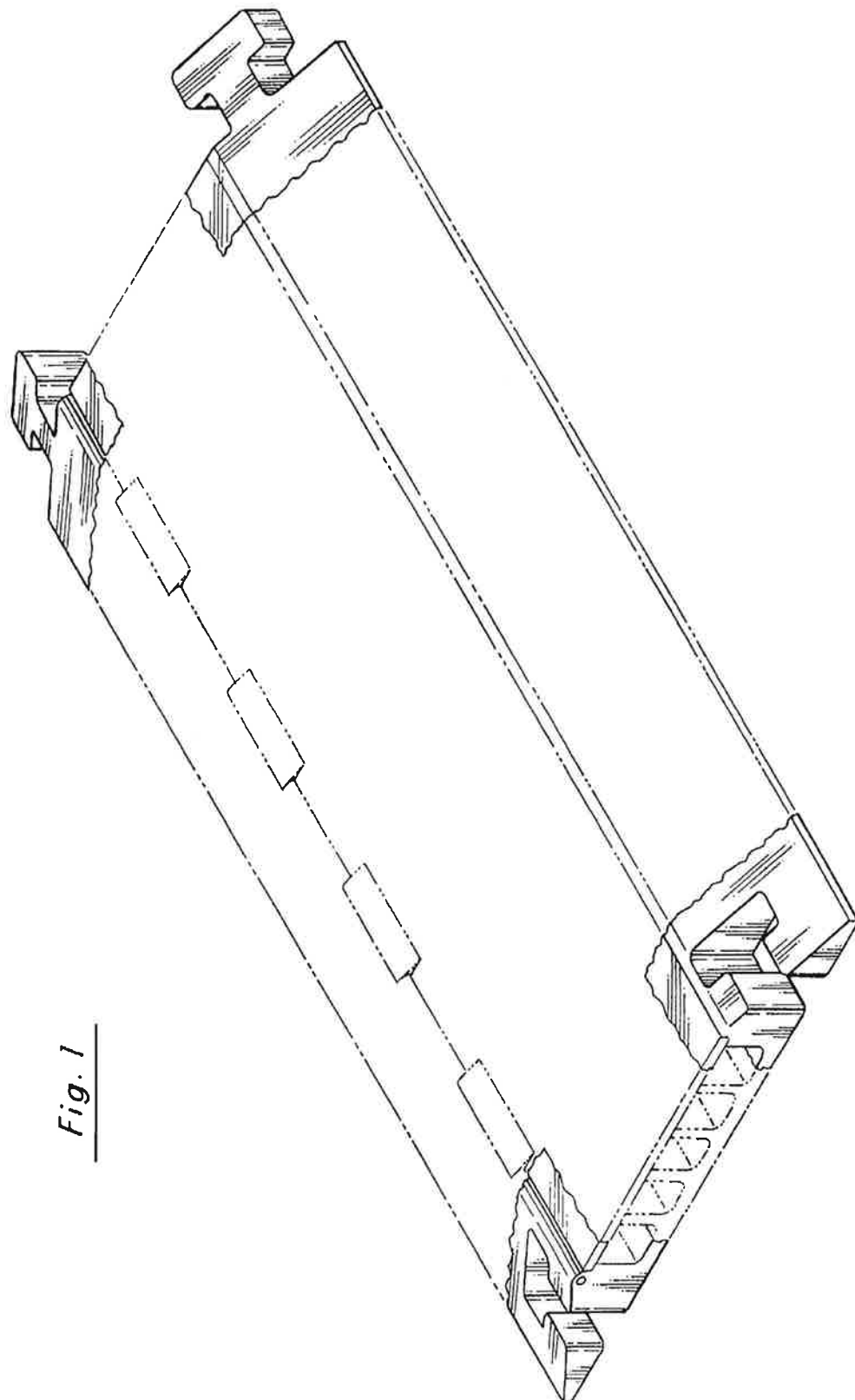


Fig. 1

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Sheet 2 of 3

Des. 415,112

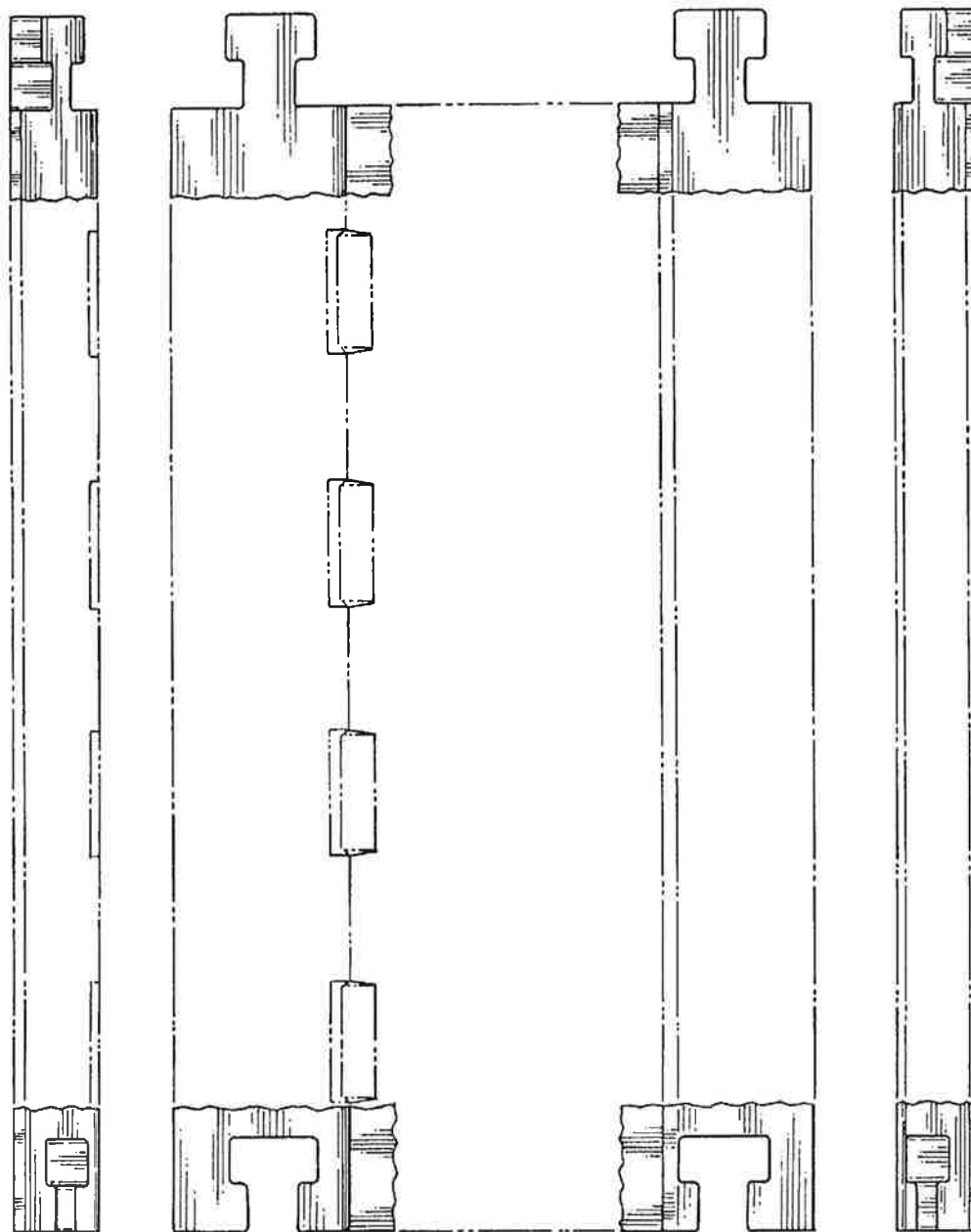


Fig. 3

Fig. 2

Fig. 4

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Des. 415,112

Fig. 7

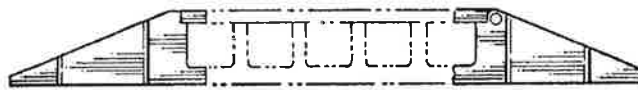


Fig. 5

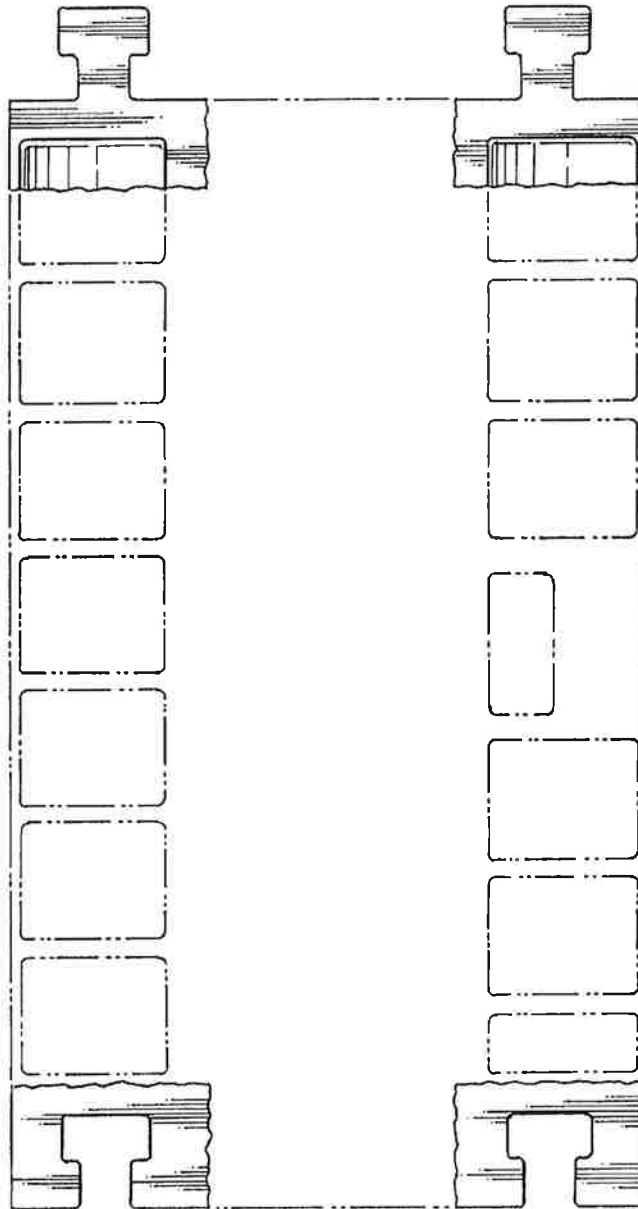


Fig. 6



EXHIBIT “2”

EXHIBIT “2”



US00D418818S

United States Patent [19]

Henry

[11] Patent Number: Des. 418,818

[45] Date of Patent: ** Jan. 11, 2000

[54] MODULAR CABLE PROTECTOR

[76] Inventor: **Stephen K. Henry**, 3825 Northbrook Dr., #F, Boulder, Colo. 80302

[**] Term: 14 Years

[21] Appl. No.: 29/099,879

[22] Filed: Jan. 29, 1999

Related U.S. Application Data

[63] Continuation-in-part of application No. 29/091,027, Jul. 22, 1998, which is a continuation-in-part of application No. 29/089,880, Jun. 25, 1998, which is a continuation-in-part of application No. 29/070,954, Apr. 10, 1997, which is a continuation-in-part of application No. 29/053,828, Apr. 30, 1996, abandoned.

[51] LOC (7) Cl. 13-03

[52] U.S. Cl. D13/155; D25/160

[58] Field of Search D13/154, 155, D13/156; D6/582, 583; D25/53, 106, 138, 157, 161, 163, 160, 158, 69; D10/109; 174/136; 64/295; 52/590.1, 177; 428/53; 483/364; D5/53

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5,777,266	7/1998	Herman et al.	174/68.1

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 Cablesafe Ramp Brochure.
 ITW Itrathane Systems.
 Yellow Jacket Cable Protectors Brochure.
 Kelsey Cable Crossovers Brochure.

Primary Examiner—Joel Sincavage

Attorney, Agent, or Firm—Dorr, Carson, Sloan & Birney, P.C.

[57] CLAIM

The ornamental design for a modular cable protector, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of a modular cable protector showing my new design. The tread pattern, shown in fragment, extends uniformly over all the flat upper surfaces.

FIG. 2 is a top plan view thereof.

FIG. 3 is a front elevational view thereof, with the rear elevational view being a mirror image of FIG. 3.

FIG. 4 is a bottom view thereof.

FIG. 5 is a left side elevational view thereof.

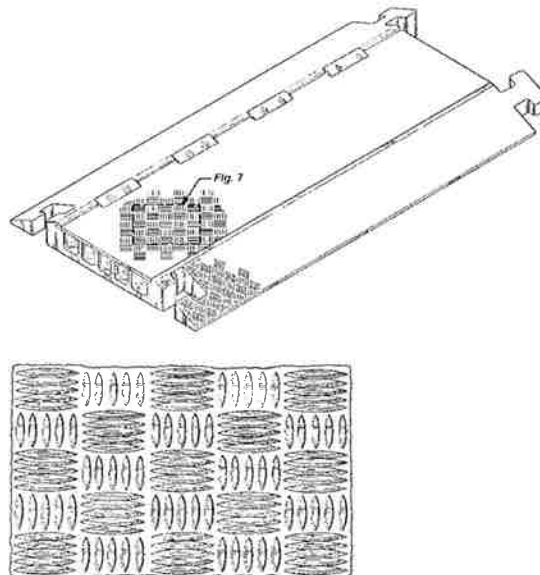
FIG. 6 is a right side elevational view thereof.

FIG. 7 is a detail view of the tread pattern shown in FIG. 1

FIG. 8 is a detail view of the tread pattern shown in FIG. 9; and,

FIG. 9 is a top plan view of a second embodiment of the modular cable protector having the same appearance as the first except for the tread pattern. The tread pattern, shown in fragment, extends uniformly over all the flat upper surfaces.

1 Claim, 5 Drawing Sheets



U.S. Patent

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Sheet 1 of 5

Des. 418,818

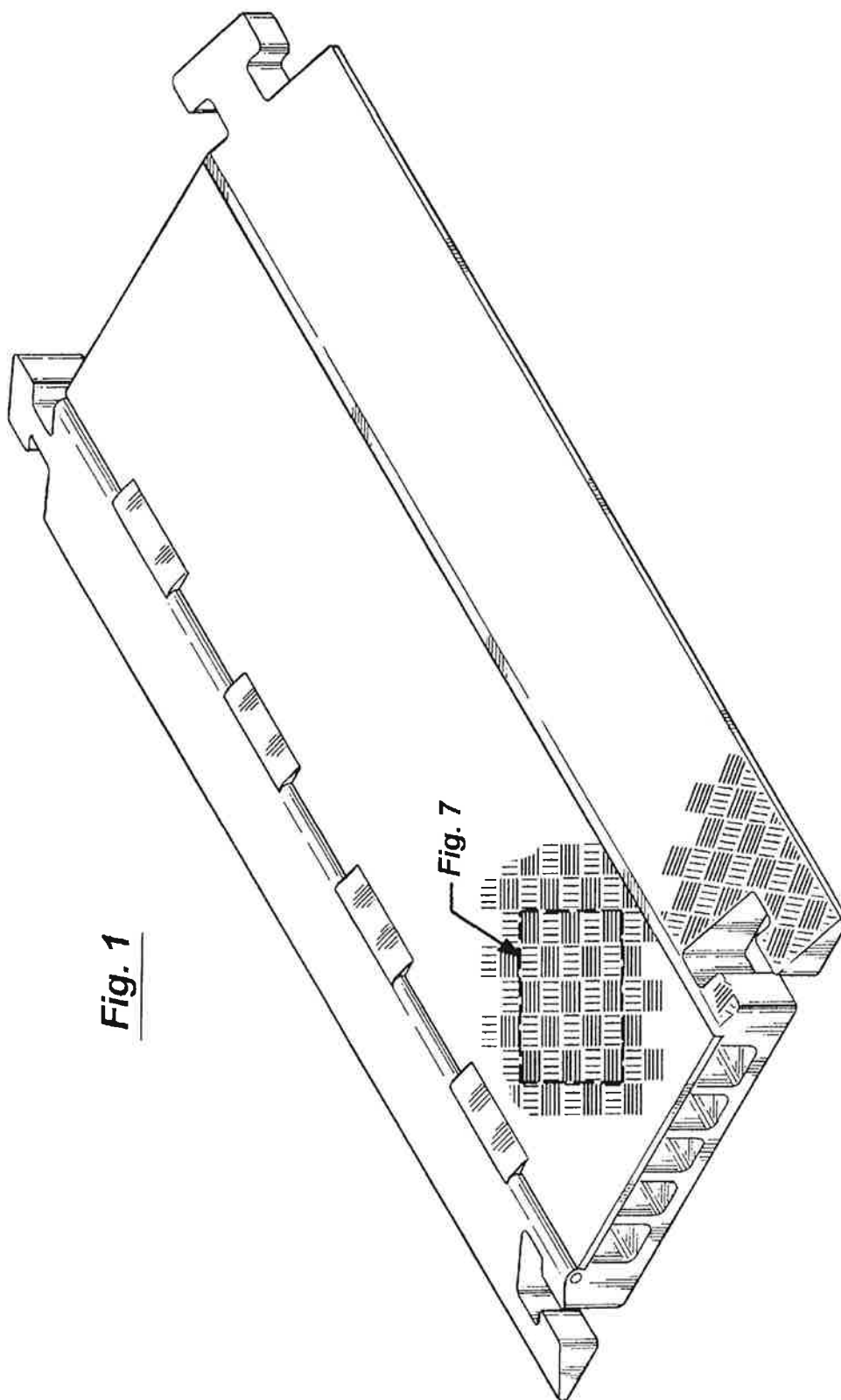


Fig. 1

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Des. 418,818

Fig. 2

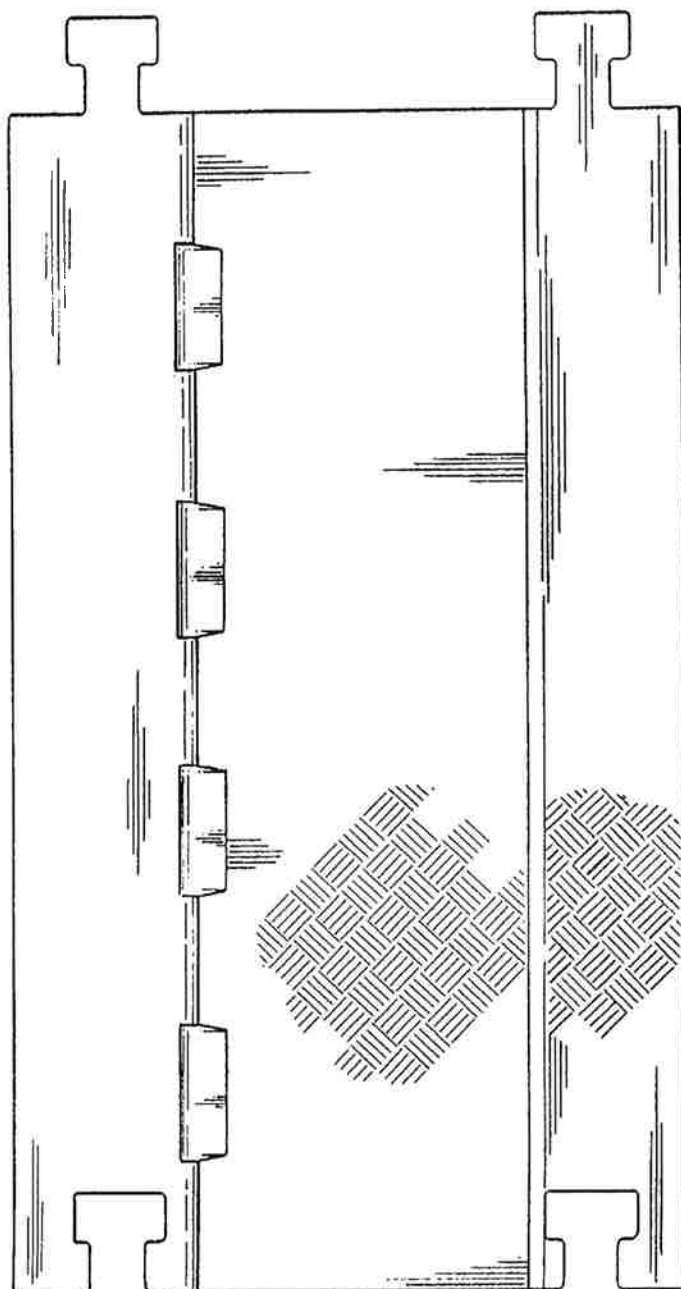


Fig. 3



U.S. Patent

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Des. 418,818

Fig. 4

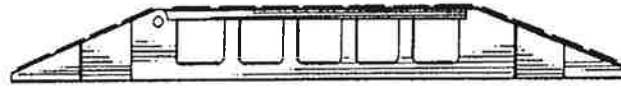
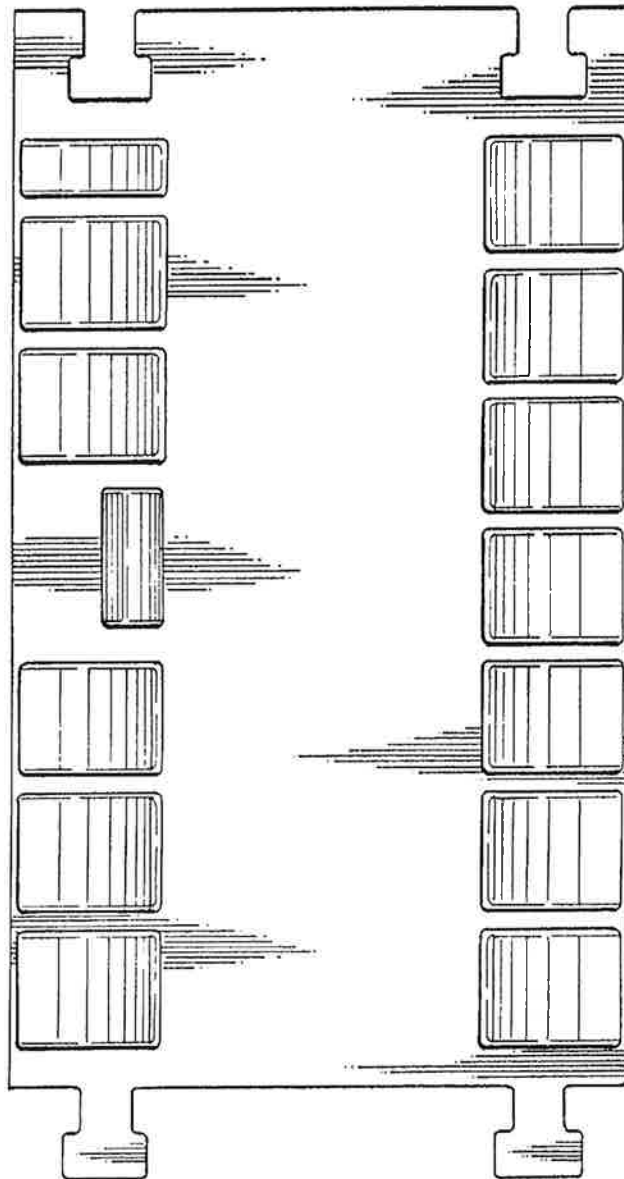


Fig. 6

Fig. 5

U.S. Patent

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Des. 418,818

Fig. 7

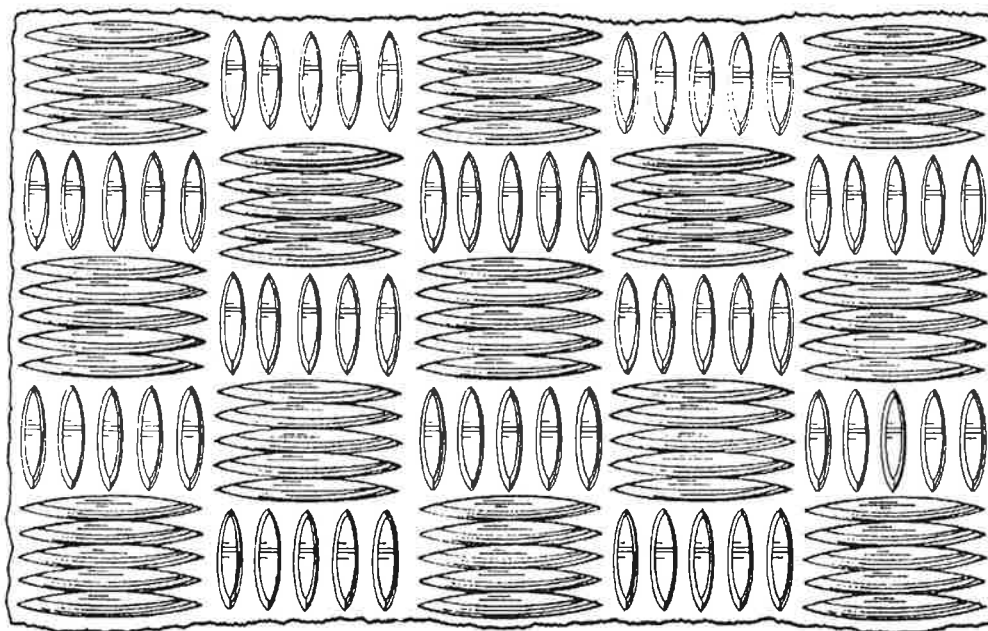
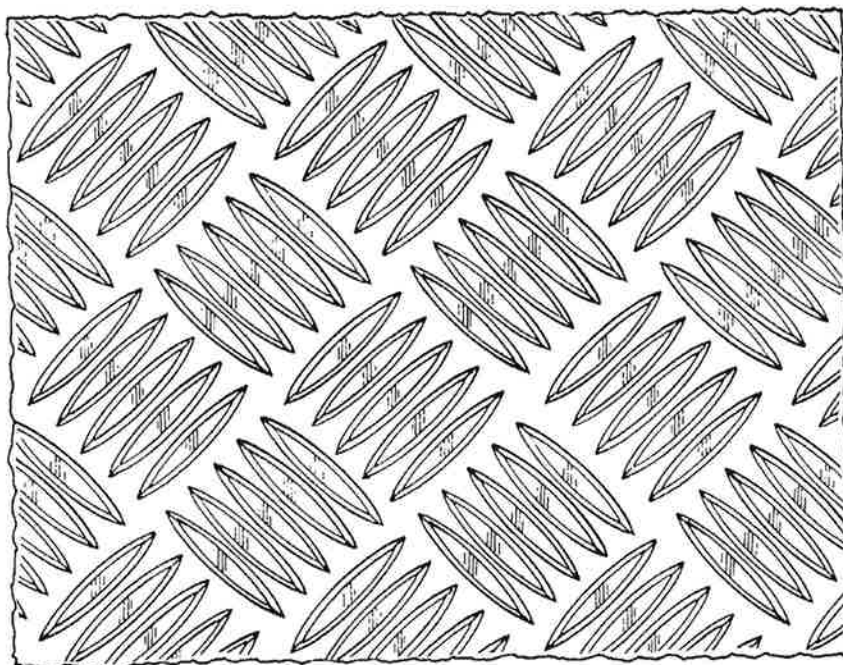


Fig. 8



U.S. Patent

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Des. 418,818

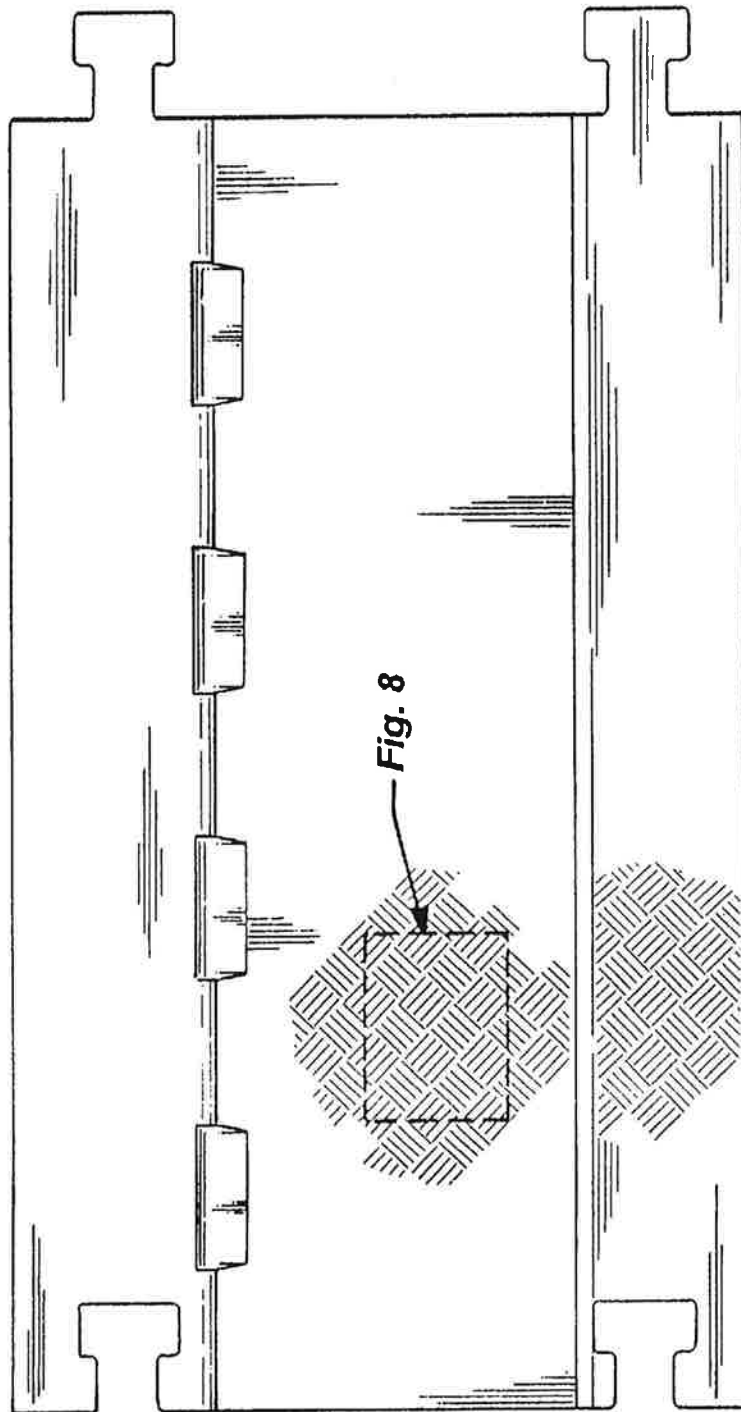
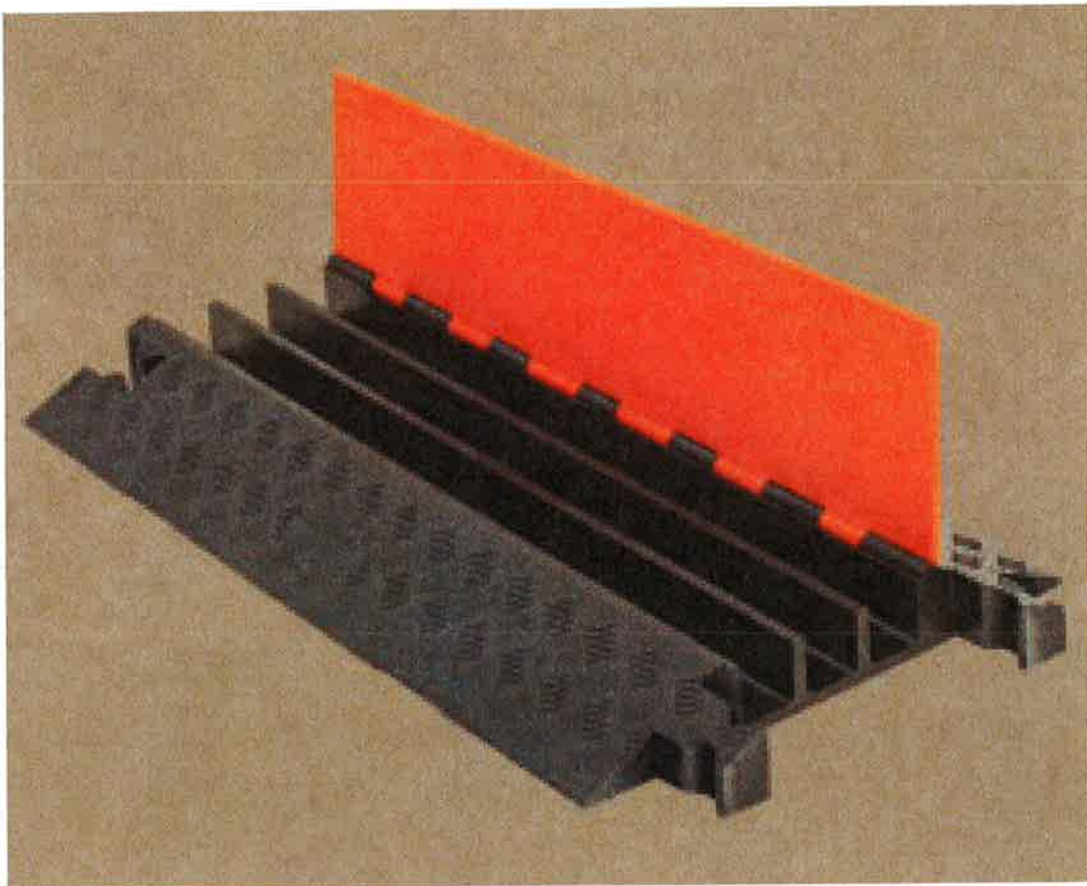


Fig. 9

EXHIBIT “3”

EXHIBIT “3”

5-Bar Trade Dress



T Connector Trade Dress & 5-Bar Trade Dress

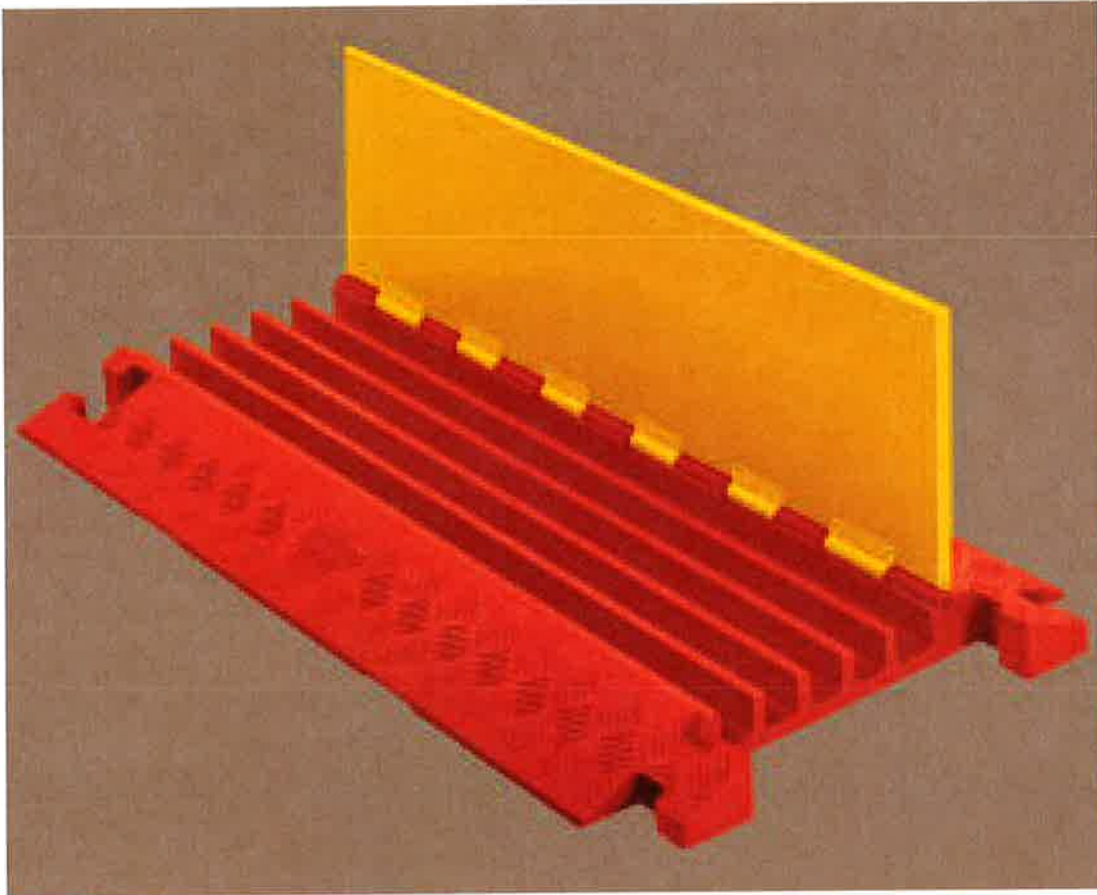


EXHIBIT “4”

EXHIBIT “4”



